

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KELLY MCSEAN,)
Plaintiff,)
v.) No. 4:24-cv-00094 SEP
ROY FOOT, et al.,)
Defendants.)

MEMORANDUM AND ORDER

Before the Court is Plaintiff Kelly McSean’s post-dismissal motion seeking to reopen this matter, Doc. [7]. For the reasons set forth below, the motion is denied.

BACKGROUND

Plaintiff Kelly McSean, a pretrial detainee at St. Francis County Jail filed this action jointly with two other prisoners in August of 2023, alleging violations of their civil rights under 42 U.S.C. § 1983. Because prisoners may not join together in a single lawsuit, Plaintiff was severed from the original case and a new case was opened in Plaintiff's name. Doc. [2]. On February 1, 2024, Plaintiff was ordered to amend the Complaint on a Court-provided form. Plaintiff was also ordered to either pay the full \$405 filing fee or file a motion to proceed *in forma pauperis* along with a copy of Plaintiff's account statement, no later than 21 days from the date of the Court's Order. Doc. [3]. Plaintiff failed to comply, and the Court dismissed this action on March 5, 2024, pursuant to Federal Rule of Civil Procedure 41(b). Doc. [6].

On March 18, 2024, Plaintiff filed a handwritten letter stating that Plaintiff “mailed the amended complaint” on February 11, 2024. Doc. [7]. Plaintiff claims to have given the amended complaint to Officer Harris at the St. Francis County Jail and further claims that the amended complaint should have been mailed from the facility on February 13, 2024. Plaintiff attached a handwritten declaration from one of the other plaintiffs named in the Complaint, Aaron Sebastian, stating that Sebastian saw Plaintiff give “an amended complaint” to Officer Harris between 2:30 a.m. and 3:00 a.m. on the “night of 2-11-24/the morning of 2-12-24.” *Id.* at 2. On that basis, Plaintiff asks the Court to reopen the case. *Id.* at 1.

On April 15, 2024, Plaintiff filed another Motion to Appoint Counsel and a “Motion to Combine the Cost of the 20% Payment of All Cases.” Doc. [8]. The Motion asks the Court to

appoint counsel in eight different cases and combine the fees for those eight cases “in to one 20%, per month payment.” *Id.* at 2.

DISCUSSION

As set forth above, on February 1, 2024, Plaintiff was ordered to amend the Complaint on a Court-provided form within 21 days. Plaintiff was also required to either pay the full \$405 filing fee or file a motion to proceed *in forma pauperis* by the same deadline.

Although Plaintiff claims to have attempted to mail an amended complaint on February 13, 2024, Plaintiff did not provide a copy of the amended complaint with the motion to reopen. As such, the Court cannot review the amended complaint to assess its compliance with the Court’s February 1, 2024, Order. For that reason, the motion is denied. *See e.g., Clayton v. White Hall Sch. Dist.*, 778 F.2d 457, 460 (8th Cir. 1985) (a party must submit the proposed amendment along with its motion); *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008) (a court may deny leave to amend a complaint when a proposed amendment was not submitted with the motion).

Plaintiff also failed to file a motion to proceed *in forma pauperis* or pay the full filing fee of \$405. Therefore, even if Plaintiff had submitted an amended complaint, the Court would still have dismissed the action due to Plaintiff’s failure to comply with that aspect of the Court’s Order. Because Plaintiff has not provided a basis for reopening the case, the motion filed at Doc. [8] is denied as moot.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s post-dismissal motion to reopen the case, Doc. [7], is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs Motion to Appoint Counsel and Motion to Combine Cost of the 20% Payment of All Cases, Doc. [8], is **DENIED as moot**.

IT IS FURTHER ORDERED that an appeal from this Order would not be taken in good faith.

Dated this 18th day of April, 2024.



SARAH E. PITLYK
UNITED STATES DISTRICT JUDGE